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## COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

### DEPARTMENT OF ENVIRONMENTAL QUALITY

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Director

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### WASTE MANAGEMENT BOARD AND STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Galax Energy Concepts, LLC

#### SECTION A: Purpose

This is an Enforcement Order issued by the Virginia Waste Management Board and the Virginia Air Pollution Control Board to Galax Energy Concepts, LLC. This order is issued by the Boards, through the Director of the Department of Environmental Quality pursuant to the authority granted to the Waste Board and the Director under sections §10.1-1402 and §10.1-1185 and the authority granted to the Air Pollution Control Board under sections §10.1-1301, 1309, 1316 and §10.1-1184 to resolve certain violations of environmental law and regulations.

#### SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §10.1-1401 and §10.1-1184 and the Virginia Air Pollution Control Board, a collegial body of the Commonwealth of Virginia as described in §10.1-1301 and §10.1-1184 of the code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code §10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Facility" means Galax Energy Concepts, LLC plant located in Galax, Virginia.

6. "SWRO" means the Department's Southwest Regional Office, located in Abingdon, Virginia.
7. "Order" means this document, also known as a consent order.

**SECTION C: Findings of Facts and Conclusions of Law**

**AIR**

1. 9 VAC 5-50-260 (Standards for Stationary Sources) of the Commonwealth of Virginia State Air Pollution Control Board Regulations For the Control And Abatement of Air Pollution states in part, "No owner or other person shall cause or permit to be discharged into the atmosphere from any affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility".
2. 9 VAC 5-170-160 (Conditions on approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations For the Control And Abatement of Air Pollution states in part, "The Board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law."
3. Condition No. 6 of the Facility's May 31, 2002 NSR permit as modified on September 4, 2003 states in part, "Particulate emissions from the unloading, storage and handling of wood waste shall be controlled by partial enclosure".
4. Several inspections/observations have been made of the Facility's yard area since September 2003. During these inspections unconfined wood waste was observed in the yard area. A Warning Letter was issued to the Facility by the DEQ air division on September 29, 2003 to remove or contain all wood waste by October 20, 2003. Based on an inspection/observation of the Facility's yard area on February 13, 2004 there are now two (2) wood waste piles at the facility not controlled by partial enclosure as required by condition No. 6 of the permit.
5. On February 26, 2004, DEQ sent a Notice of Violation Letter, by Certified Mail-Return Receipt Requested, to the Facility, informing them that the DEQ had reason to believe a violation of the Waste Management Act and the State Air Pollution Control Law had occurred.

6. Condition No. VIII.C. 3 of Galax Energy Concepts, LLC April 23, 2003 Title V permit states in part, "The permittee shall submit the results of monitoring contained in applicable requirement to DEQ no later than March 1 and September 1 of each calendar year."
7. Condition No. VIII.D of Galax Energy Concepts, LLC April 23, 2003 Title V permit states in part, "Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices."
8. On May 17, 2004 DEQ received a Compliance Certification and Semi-Annual Deviation report from the Facility. The received date of the Certifications and Deviation report is greater than 60 days past the required due date of March 1, 2004.
9. On May 24, 2004, DEQ sent a Notice of Violation Letter (NOV No. 05-06-04) by Certified Mail-Return Receipt Requested, to the Facility, informing them that DEQ had reason to believe that a violation of Air Pollution Law and Regulations had occurred.
10. On June 18, 2004, DEQ conducted an air compliance inspection at the Facility. The following deficiencies were noted: 1.) The opacity standard listed on the weekly emission observation checklists for the unloading, storage and handling of wood waste was 30%. The actual opacity limit is 20%, with 10% or greater requiring a VEE or correction in a timely manner. 2.) No specific opacity results were listed for VEO's on all units. 3.) The running 12-month fuel usage totals were added/listed/calculated incorrectly.
11. Excess emissions from the unloading of wood waste were observed from GEC's Galax facility. The wood waste was being unloaded in GEC's open parking lot area and transferred to the partially enclosed storage area by a wheel loader. Permit condition No. 6 of GEC's May 31, 2002 (as amended September 4, 2003) permit stated in part "Particulate emissions from the unloading, storage and handling of wood waste shall be controlled by partial enclosures (9 VAC 5-50-260)".

9 VAC 5-50-260. A states in part "No owner or other person shall cause or permit to be discharged into the atmosphere from and affected facility any emissions in excess of that resultant from using best available control technology, as reflected in any condition that may be placed upon the permit approval for the facility".

12. On November 15, 2004, DEQ sent a Notice of Violation Letter, by Certified Mail-Return Receipt Requested, to the Facility, informing them that the DEQ had reason to believe a violation of the State Air Pollution Control Law had occurred.

**WASTE**

**13. 9 VAC 20-80-80. Open Dumps.**

**A. Prohibition.**

1. No person shall own, operate, or allow to be operated on his property any sanitary landfill or other facility for the disposal, treatment or storage of solid waste in a manner that constitutes open dumping as provided in Part IV (9 VAC 20-80-170 et seq.) of this chapter.
2. No person shall dispose of solid waste in open dumps as defined in Part IV of this chapter.

- B. Any person who violates subsection A of this section shall immediately cease accepting additional wastes and shall initiate such removal, cleanup, closure in place, or alternative remedial actions as are required by Part IV of this chapter to alleviate the conditions that cause the facility to be classified as an open dump or to take other appropriate measures to abate improper management of waste.**

**14. 9 VAC 20-80-90 Unpermitted facilities.**

**A. Prohibitions and duties.**

1. No person shall operate a sanitary landfill or other facility for the disposal, treatment or storage of solid waste without a permit from the director.
2. No person shall allow waste to be disposed of or otherwise managed on his property without a permit from the director.
3. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

15. On December 3, 2003, the department responded to a call from Mr. Darren Taylor concerning filling with wood ash from the Facility on the property of Mr. Roger Royal at 7113 Ivanhoe Road, Ivanhoe, VA. The department found a large ravine being filled with what appeared to be an ash material. Mr. Royal confirmed the Facility had been hauling wood ash to his property since June 2003.

16. On February 26, 2004, DEQ sent a Notice of Violation Letter, by Certified Mail-Return Receipt Requested, to the Facility, informing them that the DEQ had reason to believe a violation of the Waste Management Act and the State Air Pollution Control Law had occurred.

**SECTION D: Agreement and Order**

1. Accordingly the Virginia Waste Management Board and Air Pollution Control, by virtue of the authority granted it in Va. Code §10.1-1316(C) and §10.1-1455(F), orders the Facility, and the Facility agrees to pay a civil charge of \$13,720. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

For purposes of properly identifying its payment, the Facility shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

The \$13,720 Civil Charge shall be paid on the following schedule

| <u>DATE DUE</u> | <u>MINIMUM PAYMENT</u>    |
|-----------------|---------------------------|
| 03/01/05        | \$3,430.00 or balance due |
| 06/01/05        | \$3,430.00 or balance due |
| 09/01/05        | \$3,430.00 or balance due |
| 12/01/05        | \$3,430.00                |

2. Accordingly the Virginia Waste Management Board and Air Pollution Control, by virtue of the authority granted it in Va. Code §10.1-1316(C) and §10.1-1455(F), orders the Facility, and the Facility agrees to perform the actions described in Appendix A and Appendix B of this Order.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Facility, for good cause shown by the facility or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Boards or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent

**action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.**

- 3. For purposes of this Order and subsequent actions with respect to this Order, the Facility admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.**
- 4. The Facility consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.**
- 5. The Facility declares it has received fair and due process under the Administrative Process Act, Codes § 2.2-4000 *et seq.*, and Codes § 9-6.14:1 *et seq.*, and the State Waste Management and State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.**
- 6. Failure by the Facility to comply with any of the terms of this Order shall constitute a violation of an Order of the Boards. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.**
- 7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.**
- 8. The Facility shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Facility must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Facility shall notify the Director and the Director of the SWRO within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:**

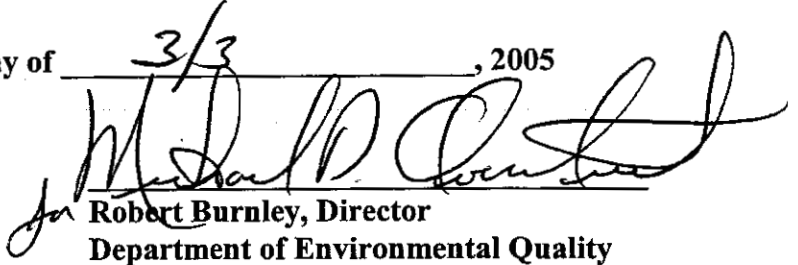
- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

**Failure to notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.**


- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.**
- 10. This Order shall become effective upon execution by both the Director or his designee and the facility. Notwithstanding the foregoing, the Facility agrees to be bound by any compliance date which precedes the effective date of this Order.**
- 11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the facility. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the facility from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.**

12. By its signature below, Galax Energy Concepts, LLC voluntarily agrees to the issuance of his Order.

And it is ORDERED this day of 3/3, 2005

  
for Robert Burnley, Director  
Department of Environmental Quality

Galax Energy Concepts, LLC voluntarily agrees to the issuance of this Order.

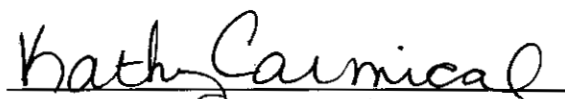
  
William G. Barr III  
Vice President Daugherty Petroleum, Inc.  
Acquisitions & Legal Affairs,  
and Manager of Galax Energy Concepts, LLC.

Date: 1-17-05

Commonwealth of Kentucky

City/County of Fayette

The foregoing document was signed and acknowledged before me this 17<sup>th</sup> day of January, 2005 by William G. Barr III on behalf of Galax Energy Concepts, LLC.

Date: 01/17/2005   
Notary Public

1. My commission expires: 08/07/07



## **APPENDIX A**

- 1. Revise the opacity standard on the facility's spreadsheet for the unloading, storage and handling of woodwaste within 10 days of signature date.**
- 2. Indicate opacity readings when conducting visible emission observations for all units within 10 days of signature date.**
- 3. Correct the formula calculation for the 12-month fuel usage totals within 10 days of signature date.**
- 4. Submit a Corrective Action Plan, within 10 days of the signature date, detailing actions GEC has taken and/or plans to take to prevent further noncompliance with permit condition No. 6 of GEC's May 31, 2002 (as amended September 4, 2003) permit.**

## **APPENDIX B**

- 1. The Facility shall provide remedial action for the ash delivered to the Royal property by choosing one of the following options:**

**Option 1. Remove the ash to an approved waste management area, within 180 days of the effective date of the Order. Provide the Department with disposal receipts within 30 days of completion. This option is provided by 9 VAC 20-80-205.B of the Solid Waste Management Regulations.**

**Option 2. Within 45 days of the effective date of the Order, submit a plan to the Department for approval to close-in-place the ash deposited on the Royal property by the Facility. The plan shall include all the requirements set out in 9 VAC 20-80-210.B and include a timeline to complete the closure. If the plan requires modifications they shall be submitted to the Department within 30 days of notification.**

**Option 3. Within 45 days of the effective date of the Order, submit a plan to the Department for approval to provide alternate remedial action as required by 9 VAC 20-80-210.C. The plan shall include all the requirements set out in 9 VAC 20-80-210.C and include a timeline to complete the remedial work. If the plan requires modifications they shall be submitted to the Department within 30 days of notification.**